



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

September 14, 1973

The Honorable George McNiel
State Auditor
Sam Houston State Office Building
Austin, Texas 78711

Opinion No. H-103

Re: Rate of tuition to be
charged non-resident
students under §§
54.051(h) and 130.003
(b) (4) of the Texas
Education Code

Dear Mr. McNiel:

You have asked us to resolve an apparent conflict between the provisions of §130.003(b)(4) and § 54.051(h) of the Texas Education Code as they apply to the tuition to be charged by public junior colleges to students who are citizens of a country other than the United States of America.

Section 54.051(h) is part of Chapter 54 of the Code, generally providing for tuition and fees chargeable by institutions of higher education. Although, by definitions found in § 61.003 of the Code, a public junior college is an institution of higher education, § 54.002 provides that Chapter 54 applies to junior colleges "only to the extent provided by Section 130.003(b) of this Code."

Section 130.003(a) provides for the biennial appropriation of State funds in an amount "sufficient to supplement local funds for the proper support, maintenance, operation, and improvement of those public junior colleges of Texas that meet the standards prescribed by this Chapter. . . ." Subsection (b) of the section provides eligibility requirements for those funds. It provides in part:

"(b) To be eligible for and to receive a proportionate share of the appropriation, a public junior college must:

"

"(4) Collect, from each full-time and part-time student enrolled, matriculation and other session fees in the amounts required and provided by law for other state-supported institutions of higher education, except that the amount charged non-residents need not be greater than the amount so required by law on January 1, 1971;" (emphasis added)

The Texas Education Code purports to be a codification of the existing law without substantive changes. Section 2, Acts 1971, 62nd Leg., p. 3072, ch. 1024; § 55, Acts 1971, 62nd Leg., p. 1449, ch. 405; and see Article 5429b-1, Vernon's Texas Civil Statutes, authorizing the statutory revision program on a "topical or code basis" and providing: "In carrying out the revision program, the sense, meaning or effect of any legislative act shall not be altered."

Prior to the adoption of the Education Code, the provisions of § 130.003 (b)(4) were found in Article 2815j-2, V. T. C. S., which provided, in part:

"It shall be mandatory that each institution participating in the funds herein provided shall collect from each full-time student enrolled, matriculation and other session fees not less than the amounts provided for by law and by other State-supported institutions of higher learning for full-time students and shall collect proportionate amounts for students taking less than a full-time student load." (emphasis added)

The amount of tuition provided for by law for students who are citizens of any country other than the United States of America in other State-supported institutions of higher learning is \$14.00 per semester credit hour but not less than a total of \$200 [§ 54.051(h) Texas Education Code]. Aliens are not the students defined as "non-residents" for whom tuition is provided by § 54.051(c) at \$40 per semester credit hour by § 54.051(j) which applies to non-resident students in a public junior college and calls for tuition as provided in subsection (b) of § 130.003. Since you have not inquired about non-resident students we need not determine what the tuition should be.

It is our opinion that there is no conflict between the sections 130.003(b)(4) and 54.051(h) and that, construing them together, public junior colleges are required to charge students who are citizens of a country other than the United States tuition at a rate of at least \$14 per semester credit hour and not less than \$200 total per semester. See Attorney General Opinion M-1024 (1971).

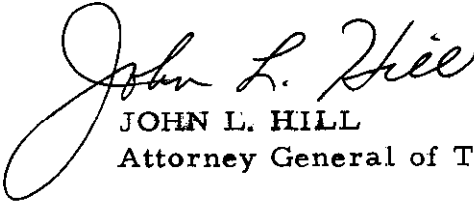
Of course, if any public junior college desires not to participate in the State funding, then §130.003(b)(4) does not apply and there is no statutory maximum or minimum tuition which may be charged aliens.

One exception must be noted to the foregoing and that has to do with an alien who is living in this country under a visa permitting permanent residence or who has filed with the proper federal immigration authorities a declaration of intention to become a citizen. Such a student, a "resident alien," who also resides in a junior college district located immediately adjacent to the Texas boundary lines shall be charged resident tuition by that junior college district (§54.057, Texas Education Code).

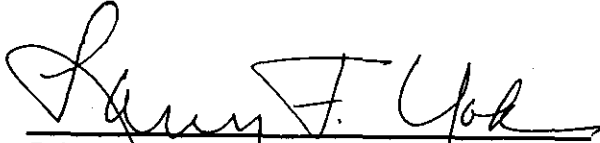
SUMMARY

Except as to resident aliens defined by §54.057 of the Texas Education Code, junior college districts wishing to participate in State funding are required to charge students who are citizens of any country other than the United States of America, a minimum of \$14 per semester credit hour and a total of not less than \$200 per semester. They may charge more.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee